IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

FILED
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NO. 1064

JOHN J. LANIGAN, CLIFFORD REES, JACK P. BRUCE, JAMES M. MURPHY, RICHARD E. LYNN, STANLEY F. HLADY, and MARK E. CASEY,

Petitioners,

vs.

LOCAL UNION NO. 9 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO,

Respondent,

JACK D. BRUCE, STANLEY F. HLADY, MARK CASEY, CLIFFORD REES and JAMES M. MURPHY, on behalf of Themselves and all others similarly situated,

Petitioners,

vs.

ROBERT FITZGERALD, JAMES A. McCANN, HOWARD CHRISTIANSEN, EMMETT J. NELSON, CLIFFORD COLLINS, STEPHEN CLANCY, JACK ELLIOTT and GEORGE GIBBS,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

BRIEF OF RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

If at the time of trial, the discipline imposed upon Petitioners (union members) through their internal union procedures had expired in every respect, and Petitioners sought only to remove what they claimed was a "blemish" on their reputation, was there a case or controversy cognizable by a Federal Court?

STATEMENT

On various dates between April 22 and May 6, 1960 (App. 516) the Petitioners were found guilty of violating certain sections of their Union International Constitution by a Trial Board of the Local Union, convened in accordance with the requirements of such Constitution (App. 531). Petitioners Rees, Lanigan, Bruce and Murphy were charged with jumping upon the platform of the Union's meeting hall after the President of the Union had properly adjourned the meeting and using abusive and insulting language for the purpose of creating a disturbance and dissatisfaction or dissension among the members of the Union. They were also charged with slandering and otherwise wronging the President of the Union. These same Petitioners along with the other Petitioners (Casey, Hlady and Lynn) were additionally charged with attending a National Labor Relations Board hearing "not for the purpose of attempting to ascertain

1. Since Petitioners have filed with this Court copies of the appendix record used in the lower court, record citations will be to the said appendix and will be designated by the letters "App." followed by the number of the relevant page in the appendix. Petitioners have also included several appendices in their Petition, and references thereto will be designated by the letters "S. A." followed by the relevant page number.

facts or to inquire as to the nature of the proceedings, but for the express purpose of harassing, embarrassing and annoying the Business Manager of the Union while he was testifying on behalf of the Local Union pursuant to subpoena issued by the National Labor Relations Board." The charges alleged that for such purpose, while the Business Agent was testifying at the hearing on behalf of the Union, Petitioners grimaced, made faces and laughed at him in the clear view of the Hearing Officer and the others present. (Resps. Exh. 12, 18, 25, 31, 37, 43, and 49; App. 547, 562, 567, 589, 591, 601 and 602).

The Union Trial Board found the Petitioners guilty of a number of the charges but not all of them.[2] The Trial Board, however, specifically stated that it did not "desire to create any financial hardship upon his family." [S. A. 3a]. Accordingly, it directed that each Petitioner "be ineligible to participate in the affairs of the local union for a period of three years or one year depending upon his involvement in the proscribed conduct." The Trial Board "emphasized that its action was not to be construed as interference with the right of the plaintiffs to work at their present job or at any other job within the jurisdiction of the local union or the International union." (Ct. of Appeals Dec., S. A. 3a).

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2. The Actions and Findings of the Trial Board for each of the Petitioners appear as the following exhibits on the following pages of the Appendix:

Clifford Reese	Exh. No. 11	App. 550-557
John J. Lanigan	Exh. No. 20	App. 565-572
Richard Lynn	Exh. No. 27	App. 578-584
Jack D. Bruce	Exh. No. 33	App. 589
Stanley F. Hlady	Exh. No. 39	App. 592-598
Mark E. Casey	Exh. No. 45	App. 602
James M. Murphy	Exh. No. 51	App. 603

All of the Petitioners appealed the Trial Board decisions to the International Vice President (S. A. 3 a). On May 15, 1961, the Vice President affirmed the Trial Board's decision. "However, he reduced the penalties so that the membership rights and privileges of all the plaintiffs were restored by July 25, 1961." (Ct. of Appeals Dec., S. A. 3 a; *See also*, App. 559, 572, 589, 603, 585-586, 598, 602). Petitioners thereafter appealed to the International President, contending that they would be prohibited from running for union office after the penalty period expired. The President, however, held that they were in error "and the only interpretation which could be given to the decision of the board as commuted by the International vice president was that plaintiffs were entitled to participate in all activities, including the running for office, after July 25, 1961." (Ct. of Appeals Dec. S. A. 3 a). Thus, the International President specifically found and informed Petitioners:

> "1. After July 25, 1961, all rights, privileges and benefits were to be restored to you and after said date you were privileged to exercise full rights of membership.
>
> "2. You were at all times permitted to maintain your membership.
>
> "Although you were denied certain rights and privileges, it is my interpretation of the Vice President's decision, and I hereby rule that
>
> "The action of the Trial Board and the Vice President's decision in no way denied you the right to maintain your (good standing) membership.
>
> "Therefore, if you maintained your continuous good standing and you continue to maintain your continuous good standing in the Local Union as required by the provisions of Article XVIII, Sec. 10 of the IBEW Constitution, you shall be eligible to be a candidate for Local Union office in the Local Union election scheduled for

1963." (App. 561-562. *See also*, App. 572-574, 587-588, 589, 598-601, 602, 603).

The trial herein commenced in the district court in October, 1962. By the time the cases reached trial and, in fact, since July 25, 1961, all rights, privileges, and benefits equal to the rights enjoyed by all other members were vested in Petitioners (App. 252, 286-287, 524). In fact, several of them have run for local union office.

ARGUMENT

Petitioners present nothing novel. There is no conflict among the circuits and the Court of Appeals decided the issue in accordance with prior decisions of this Court. All that was involved here was internal union trials conducted in accordance with the provisions of the International Constitution and based upon specific written charges to which Petitioners presented full and complete claimed defenses in lengthy internal hearings. Petitioners' appeals within the structure of the International Union were granted in part in that the penalty periods were reduced and all rights and privileges equal to those enjoyed by other members were restored no later than July 25, 1961. Petitioners now claim to this Court that this matter involves a situation which had precluded them from running for union office. Apart from the fact that the question of union elections was not involved in the present trial (and could not be because of the requirements of Title IV, Section 403 of the Act, 73 Stat. 534, 29 U. S. C. § 483) as the Court of Appeals noted, the president of the International Union, in reply to Petitioners' appeal, specifically informed them that "the only interpretation which could be given to the decision of the Board as communicated by the International Vice President was that plaintiffs were entitled to participate in all activities, including the running for office, after July 25, 1961" (Ct. of Appeals dec., S. A. 3 a). Clearly then, when the trial commenced in the district court in October, 1962, the matter presented no case or controversy under Article III, Section 2 of the Federal Constitution.

Petitioners nevertheless contend that despite the absence of a case or controversy before the trial court, this Court

should intercede because "the Court of Appeals decision in the instant cases will all but attenuate and render useless the Act's Bill of Rights provisions." They contend that the decision below would create a simple means by which corrupt labor officials could indefinitely retain control of unions. The method they envision is that of bringing spurious charges against opposing candidates immediately before an election, then trying and convicting them without a fair hearing. The suspension, according to the plan outlined by the Petitioners, need last only long enough until the election is held and the whole cycle can be repeated when election time rolls around again in a subsequent year.

Aside from the fact that there was no finding and no proof that any corruption was present in the instant matter (indeed Respondents' only alleged error was that they faithfully followed their International Constitution) Petitioners give too little credit to the resourcefulness of our federal court system. The federal courts have been very diligent to prevent just what Petitioners claim to fear, namely, the holding of union elections where irreparable harm would result from holding them. For example: in *Beckman* v. *Local No. 46, International Association of Bridge, etc. Workers*, 314 F. 2d 848 (C. A. 7, 1963) the instant Circuit upheld the district court's action in enjoining the counting of ballots of a local union election where the ballot box had disappeared for several hours following the election. Similarly, wherever it appeared that the harm would be irreparable by holding the election a court could presumably enjoin that election. Moreover—and most important—Title IV of the Act gives the Secretary of Labor authority to file suit in federal district court to set aside any election where members were unfairly denied the right to be candidates. It is clear then that what Petitioners are attempting to do is, after an election has been held, to convert a Title I action into a Title IV ac-

tion. Now, for the first time, they are attempting to have a reviewing court determine the propriety of a completed election, a task which Congress has relegated exclusively to the Department of Labor (See, Section 403 of the Landrum-Griffin Act, 73 Stat. 534, 29 U. S. C. § 483). In their statement of the question, Petitioners refer to an alleged attempt by internal union trial and suspension to "preclude them from, among other things, running in a scheduled election for union offices . . ." (Petition, page 2). No such issue is before the Court. The Trial Court made no such findings (App. 514-534). Moreover, Petitioners as admitted on page 4 of their Petition, originally sought a temporary restraining order enjoining the holding of the Local Union's elections scheduled for June, 1960, and the District Court denied any injunctive relief. Subsequently, the District Court sustained a motion to dismiss from the complaint those portions "which seek to set aside or invalidate the membership election of June, 1960 and to invalidate or enjoin actions taken or proposed, authority exercised or assumed, compensation paid or to be paid, and all other incidents, powers, rights and duties arising out of the said election" (App. 94-95). No appeal was taken from such dismissal. Neither at the trial nor before the Court of Appeals did Petitioners contend that an election issue was involved in this case. The trial in the District Court proceeded on the theory that all issues with respect to union elections and the nomination of candidates were removed from the case. Indeed, under the Statute already cited, and under the reported decisions, it is clear that the trial court was even without jurisdiction to consider any election question *once the election had been held*. *Robins* v. *Barback*, 325 F. 2d 929 (C. A. 2, 1963); *Mamula* v. *Steelworkers*, 304 F. 2d 108 (C. A. 3, 1962), *cert. denied*, 371 U. S. 823 (1962). If there had been any impropriety practiced with respect to any union election

clearly the Petitioners had a remedy available to them through the Department of Labor.

The only issue before this Court is whether the instant cases were moot at the time of trial. We submit that the Court of Appeals was correct in holding that they were. As the Court stated, "By the time the cases were tried in the district court in October, 1962, all rights, privileges, and benefits enjoyed by members of the local union had been restored to plaintiffs." (S. A. 3a-4a). The trial court itself found that at the time of the trial Petitioners were "members of the union in good standing with all the rights of other members." (App. 524). Petitioners nevertheless maintain that these cases are not moot because the internal union trials marred their "theretofore unblemished union records" and that it is proper for a federal court to take jurisdiction of the cases "to have the conviction expunged from the union record." (Petition, pages 5-6). Actually, as we have noted, it is not true that there is presently any blemish on the records of Petitioners. They are free to vote, run for office and have all of the other privileges of members in good standing. But, irrespective of any other considerations, as the Court of Appeals noted, in the analogous cases of *United States* v. *St. Pierre*, 319 U. S. 41 (1943) and *Parker* v. *Ellis*, 362 U. S. 574 (1960), where petitioners sought review of prison sentences imposed upon them, this Court held that both cases were moot because the petitioners had been released from prison before the Supreme Court had an opportunity to rule on the petitions (Ct. of Appeals Dec. S. A. 6 a). Even the instant trial court found that the grounds now invoked by Petitioners in an effort to obtain certiorari are insufficient to vest jurisdiction in a federal court: "[T]he mere existence of a blemish on the reputation of the plaintiffs would not present a case or controversy for

this court to determine. *St. Pierre v. U. S.*, 319 U. S. 41 (1943)" (App. 526). Petitioners, clearly troubled by the *St. Pierre* and *Parker* cases attempt to distinguish them and state: "Both *St. Pierre* and *Parker* were concerned with writ of habeas corpus applications . . . both rested their judgments on the statutory requirements upon which the actions were predicated—*i.e.*, Section 2241, subsection (c) (1) of Title 28, U. S. C. . . ." In reply, all one can say is that it just is not so. In their anxiety Petitioners have misread *St. Pierre*. *St. Pierre* was not concerned with a writ of habeas corpus application. Nor, was the judgment of this Court in that case grounded on the statutory requirements of 28 U. S. C. Section 2241. *St. Pierre*, as the first line in the official Reports states, was before the Court on a writ of certiorari "to review the affirmance (132 F. 2d 537) of a sentence to imprisonment for contempt of court." The decision was, however, decided not on statutory but on constitutional grounds, the Court holding that "A federal court is without power to decide moot questions or to give advisory opinions which cannot affect the rights of the litigants in the case before it." The court specifically held, "The moral stigma of a judgment which no longer affects legal rights does not present a case or controversy for appellate review." See also, concurring opinion of Justices Harlan and Clark in *Parker v. Ellis*, 362 U. S. 574, where, citing the *St. Pierre* case, the justices noted that Article III, Section 2 of the Constitution requires a "case or controversy" for a federal court to assume jurisdiction.

The Court of Appeals relied also on the Tenth Circuit's decision in *Patterson v. International Alliance of Theatrical Employees*, 323 F. 2d 368 (1963), which is the only other Court of Appeals decision to consider the precise question at issue here in an internal union trial context. In that case, a union member asked the District Court to void an order of

the union suspending his membership for six months because of alleged misconduct. He requested the suspension be expunged from the records of the local union and that the union be enjoined from enforcing the order. The hearing was held before the district court subsequent to the expiration of the suspension order and when the Plaintiff was again enjoying full membership privileges. The district court dismissed the case as moot. Affirming the court of appeals stated:

> "The order of suspension related solely to Patterson's relationship with the Union. It in nowise affected his employment, his pay, his seniority, his working conditions, or his status as an employee. At the time of the trial below, he was enjoying all the rights and privileges of a member of the Local. There was no likelihood that any further disciplinary action would be taken in the matter which brought about his suspension.
>
> "In that posture of the case, it seems to us that the controversy was abstract or moot, rather than definite or concrete."

That precisely is the situation with the Petitioners in the instant case. The suspension in nowise affected their employment, their pay, their seniority, their working conditions, or their status as employees. At the time of the trial all were enjoying all of the rights and privileges of other members of the Local. Furthermore there was no showing of any likelihood of any further disciplinary action. Indeed several of the Petitioners have since run for major offices in local union elections. Petitioners nevertheless assert in general terms that the instant cases are not moot because they "are not abstract, are not academic, are not based upon hypothetical facts and do not request an advisory opinion." (Petition, page 9). Actually, what the District Court did was precisely to issue an advisory opinion. Thus the Dis-

trict Court openly stated that although there was no specific relief with respect to their union status that it could offer Petitioners, nevertheless "(i)n future trials of union members, perhaps of these same men, the same union procedures may be followed" (App. 524). The trial court specifically found that its "judgment . . . would not eliminate a present violation of the plaintiffs' rights" (App. 526). It said that: "It would, however, serve to avoid repetition in the future of such illegal conduct as had occurred previously and which otherwise the defendant would be free to resume. Without a declaration by this court at this time that the (International Constitution) procedures followed in the Union trial at issue were illegal, subsequent trials may be conducted in the same fashion. . . . It would appear that a declaration of illegality is essential to avoid repetition of the offense." (App. 526-527).

We find it difficult to conceive of a more obvious example of an advisory opinion. In refusing to accept the District Court's rationale, the Court of Appeals correctly pointed out:

> "It should be noted that plaintiffs did not seek to enjoin the future enforcement of the assailed constitutional provision. Should a union member claim in the future that this provision violates the Landrum-Griffin Act, he would have to institute a new suit to determine the issue." (Ct. of Appeals Dec., S. A. 6a).

As the Court of Appeals stated (S. A. 7a), "We are mindful of what the Supreme Court said in *United States v. Alaska S. S. Co.*, 253 U. S. 113, 116 (1920):

> "However convenient it might be to have decided the question . . . this court is not empowered to decide moot questions or abstract propositions, or to declare, for the government of future cases, principles or rules of law

which cannot affect the result as to the thing in issue in the case before it.'"

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari be denied.

Respectfully submitted,

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May 28, 1964

3. With respect to Petitioners' contention that the instant cases satisfy the "impact of actuality" standard suggested by Justice (then Professor) Felix Frankfurter in "A Note on Advisory Opinions", 37 Harv. L.R. 1002, 1006, the short answer is that Justice Frankfurter himself was one of the Justices of the Court when, by *per curiam* opinion, it decided the *St. Pierre* case.